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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,441	01/27/2004	Minoru Kihara	248067US	8701
22850	7590	03/18/2008		
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER				
ESTREMSKY, GARY WAYNE				
ART UNIT		PAPER NUMBER		
3673				
NOTIFICATION DATE		DELIVERY MODE		
03/18/2008		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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### Office Action Summary

**Application No.**

10/764,441

**Applicant(s)**

KIHARA, MINORU

**Examiner**

Gary Estremsky

**Art Unit**

3673

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 11 and 18-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11 and 18-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/28/08 has been entered.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 11, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 1,702,621 to Stelljes in view of U.S. Pat. Application Publication No. 2003/0090114 to Kang.

Stelljes '621 discloses Applicant's claim limitations including : an "engaging piece" – 15, "fixed on a lid" – 11,10 as shown in Fig 1, a "latch mechanism" – particularly including 26, "fixed on a main body portion of the bag" – 14,10. Stelljes '621 doesn't disclose ring portion 15 to be "clad with a synthetic resin" but Kang '114 discloses it is

well known in the art of latches to do so. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide part 15 of Stelljes '621 with a synthetic resin coating as taught by Kang '114 for noise damping as suggested by Kang '114.

As regards claim 19, it would have been an obvious design choice or engineering expedient for one of ordinary skill in the art at the time of the invention to provide the top surface of 26 to be metal to ensure good strength where examiner takes Official Notice that it is well known in the art to form latch portions from metal. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

3. Claims 11 and 18 - 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 1,590,400 to Widmer in view of U.S. Pat. Application Publication No. 2003/0090114 to Kang.

Widmer '400 discloses Applicant's claim limitations including : an "engaging piece" – including 5, "fixed on a lid" – as shown in Fig 1, a "latch mechanism" – particularly including 9, "fixed on a main body portion of the bag" – as shown. Widmer '400 doesn't disclose ring portion 9 to be "clad with a synthetic resin" but Kang '114 discloses it is well known in the art of latches to do so. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide part 15 of Stelljes

'621 with a synthetic resin coating as taught by Kang '114 for noise damping as suggested by Kang '114.

As regards claim 19, it would have been an obvious design choice or engineering expedient for one of ordinary skill in the art at the time of the invention to provide the top surface of 5 to be metal to ensure good strength where examiner takes Official Notice that it is well known in the art to form latch portions from metal. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

#### ***Response to Arguments***

4. Applicant's arguments filed 1/28/08 have been fully considered but they are not persuasive. Arguments that the disclosed bag and/or its arrangement with a latch mechanism are different are not persuasive where the claims do not include limitations corresponding in scope with the arguments. Arguments that the prior art references would not function as well or might wear out too quickly are not persuasive where one of ordinary skill in the art would have the skill necessary to determine opening size and clearance as well as to choose materials to achieve a desired life expectancy of the finished product.
5. Arguments regarding search and examination in other countries are not entirely persuasive as regards the requirements for obtaining a U.S. Patent.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Estremsky whose telephone number is 571 272-7055. The examiner can normally be reached on T,W,Th,F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Engle can be reached on 571 272-6660. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Gary Estremsky  
Primary Examiner  
Art Unit 3673

/Gary Estremsky/  
Primary Examiner, Art Unit 3673

**Search Notes (continued)****Application/Control No.**

10/764,441

**Examiner**

Gary Estremsky

**Applicant(s)/Patent under  
Reexamination**

KIHARA, MINORU

**Art Unit**

3673

**SEARCHED**

Class	Subclass	Date	Examiner
292	update	3/4/2008	GWE

**INTERFERENCE SEARCHED**

Class	Subclass	Date	Examiner

**SEARCH NOTES  
(INCLUDING SEARCH STRATEGY)**

	DATE	EXMR